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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,836	02/20/2004	Dean Tornabene	K-73	4160

7590 08/29/2005

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EXAMINER
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HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TWS

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/781,836	TORNABENE, DEAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Victor K. Hwang	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☒ Claim(s) 1, 2, 4 and 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>April 16, 2004</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: on page 5, line 11, "16" presumably should be changed to --26--.

Appropriate correction is required.

### ***Claim Objections***

2. Claims 1, 2, 4 and 5 are objected to because of the following informalities:

in claim 1, line 9, the recitation "said second frame" presumably should be changed to --said first frame--;

in claim 1, line 24, the recitation "bar being fastened" presumably should be changed to --end being fastened--;

in claim 1, line 24, the recitation "lower portion" presumably should be changed to --lower end--;

in claim 2, the recitation "said one footrest" on line 1 presumably should be changed to --one footrest--;

in claim 4, lines 2-3, the recitation "said center member connecting" presumably should be changed to --connecting member of--; and

in claim 5, the recitation "Claim 1" presumably should be changed to --Claim 4-- in order to provide proper antecedent basis for "said flexible straps" on line 4.

Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) he has abandoned the invention.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by *Perez* (US Pat. Pub. 2004/0063555 A1). *Perez* '555 discloses all of the claimed limitations.

5. Claims 1-6 are rejected under 35 U.S.C. 102(c) because the invention has been abandoned. U.S. Patent Application 10/041,995, filed January 10, 2002, was expressly abandoned December 12, 2002 by applicant Dean Tornabene. This is considered by the Examiner to be evidence of express intent or conduct by the inventor to abandon his invention. See MPEP 2134. It appears the inventor has done nothing over a period of time to develop or

patent his invention. The inventions disclosed in the first application and the instant application are exactly the same, and the filing of the instant application on February 20, 2004 is over a year from the date of express abandonment of the first application.

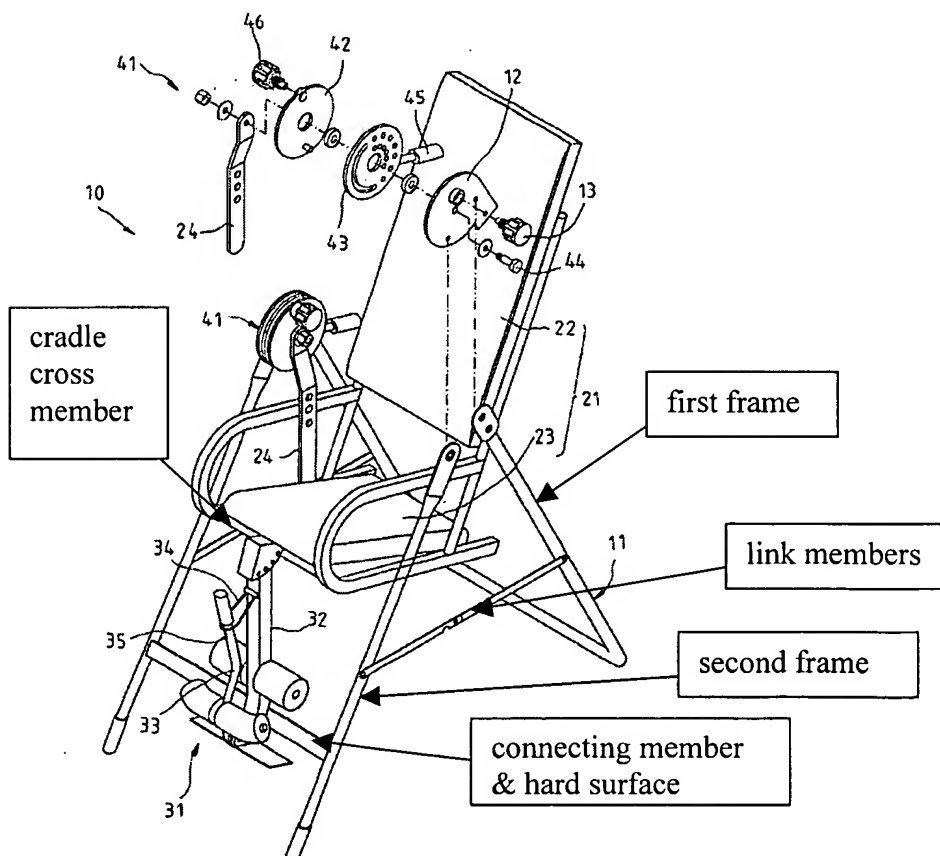
***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hsien* (US Pat. 6,679,818 B2) in view of *Tornabene et al.* (US Pat. 6,022,304). *Hsien* discloses an exercise apparatus (see annotated Fig. 1 below) comprising a first frame having two members parallel to each other, the first frame connected on one end of the two members by a connecting member, the two members having handles 45 fitted thereon on the other end, the first frame resting on a hard surface; a second frame having two members parallel to each other, the second frame being rotatively attached on one end to the first frame by a hinge pin 44, the second frame being connected on one end by a connecting member, the second frame sitting on a hard surface; link members linking the first frame members to the second frame members, the link members locking in a straight position, the link members unlocking and folding in a closed position; a seat 21, having a top and a bottom, the seat being a pad; a cradle member, the cradle member having two cradle arms 24, the cradle arms having a lower end and an upper end, the upper end being rotatively attached to an extension of the hinge pins, the lower end being attached to cradle cross

member, the cradle cross member being further attached to the bottom of said seat; a center bar 32 having an upper end and a lower end, the center bar upper end being fastened to the bottom of the seat, the center bar lower end resting on a hard surface; two foot rests attached to the lower end of the center bar, the lower end of the center bar having a back side and a front side. One footrest is attached by a footrest extension member to the front side of the center bar, the footrest being attached in the center. An exerciser could sit on the seat, place their feet on the two footrests, place their hands on the handles, lean back to allow the exercise apparatus to rotate upward and then bend forward to allow the exercise apparatus to rotate downward until the exercise apparatus is restrained by the hard surface.



*Hsien* does not disclose the seat being made from a hard material, the seat hard material being covered on top with a soft material, the soft material being covered with a waterproof material (claim 1).

*Tornabene et al.* discloses an exercise apparatus comprising a seat consisting of a hard material covered by foam rubbers and further covered by waterproof material (col. 3, lines 10-13). It is known in the exercise art that seats having a foam pad over a hard surface provide adequate support with comfort and that a waterproof material covering for the pad would allow for easy cleaning of the seat between uses.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the seat of *Hsien* with the seat construction disclosed by *Tornabene et al.*, since such seat construction is common in the exercise art and would provide a comfortable and hygienic support for a user using the exercise apparatus.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Hsien* (US Pat. 6,679,818 B2) in view of *Tornabene et al.* (US Pat. 6,022,304) as applied to claim 1 above, and further in view of *Kwo* (US Pat. 5,551,937). *Hsien* as modified by *Tornabene et al.* discloses the invention as claimed except for one of the two footrests attached to the back side of the lower end of the center bar.

*Kwo* discloses an exercise apparatus comprising two footrests 34,37 attached to the lower end of a center bar 31, the lower end of the center bar having a back side and a front side. One footrest 34 of the two footrests is attached to the back side of the center bar and the other footrest 37 is attached by a footrest extension member 35 to the front side of the center bar. This is a

common construction of footrests known in the exercise art to secure a user's feet during exercise.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide one of the two footrests of *Hsien* as modified by *Tornabene et al.* with a location on the back side of the center bar, since such construction and location is common and known in the exercise art for securing a user's feet during exercise, as demonstrated by *Kwo*.

9. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hsien* (US Pat. 6,679,818 B2) in view of *Tornabene et al.* (US Pat. 6,022,304) as applied to claim 1 above, and further in view of *Teeter et al.* (WO 97/27904). *Hsien* as modified by *Tornabene et al.* discloses the invention as claimed except for a flexible strap having two ends, one end being connected to the connecting member of the second frame and the other end being connected to the lower end of the center bar (claim 4).

*Teeter et al.* discloses an exercise apparatus comprising a frame 30 having a connecting member 44, a seat supported by a cradle member 16 rotatively attached to the frame 30, and a strap 96 for limiting rotation of the seat with respect to the frame.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise apparatus of *Hsien* as modified by *Tornabene et al.* with the strap of *Teeter et al.* between the second connecting member and the lower end of the center bar, in order to limit to the rotation of the seat by a user and prevent over-rotation that could injure a user or affect the stability of the apparatus.



***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Perez* (US Pat. Pub. 2003/0130100 A1) claims priority to US Pat. Application 10/041,995 making the application an available prior art reference.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

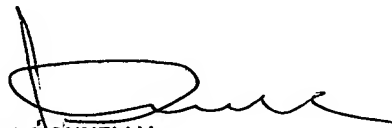
The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
August 26, 2005



JEROME W. DONNELLY  
PRIMARY EXAMINER